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# International Covenant on Civil and Political Rights

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**Human Rights Committee**
**111th session**

**Summary record of the 3068th meeting**
Held at the Palais Wilson, Geneva, on Monday, 7 July 2014 , at 3 p.m.

*Chairperson*: Sir Nigel Rodley

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**

*Sixth periodic report of Chile* (CCPR/C/CHL/6; CCPR/C/CHL/Q/6 and Add.1; HRI/CORE/CHL/2013)

1. *At the invitation of the Chairperson, the delegation of Chile took places at the Committee table.*

2. **Mr. Riveros** (Chile) said that, since the end of the dictatorship in 1990, Chile had considerably enhanced the promotion and protection of human rights, particularly civil and political rights. It had ratified most international instruments and had taken the necessary steps to bring its legislation and institutions, along with its public policies and programmes, into line with international standards. Given the profound legislative, institutional and cultural changes involved, incorporating international human rights law had not been without its difficulties, but the commitment of successive Governments since 1990 had borne fruit. The current Government, realizing that more remained to be done, had undertaken to ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, together with those human rights treaties to which Chile was not yet party, and to enshrine in the Constitution the primacy of international instruments for the purpose of interpreting the law.

3. Since submitting its previous report in 2007, Chile had taken many steps to promote respect for human rights even further. The work of the four truth commissions, established in 1990, 1992, 2003 and 2010 respectively, had allowed an unprecedented policy to be introduced on compensation for victims of human rights violations committed under the military dictatorship, and the current Government was committed to amending existing compensation laws and creating a special unit to deal with the issue. The courts had significantly expanded their case law concerning the serious violations committed during the dictatorship and the Supreme Court had ruled that those violations constituted crimes against humanity or war crimes, as a result of which they were not subject to statutory limitation and could not be covered by any amnesty.

4. The establishment of the National Human Rights Institute in 2010, whose A status accreditation demonstrated that it complied fully with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles), was another notable example of progress. In terms of political rights, the binominal system, which had prevented minority candidates from winning seats in parliament, had been changed to one that guaranteed participation by all political groups on an equal footing. The Government was determined to continue reforming the military justice system so as to restrict its scope to military personnel, property and premises. The adoption of a new consultation mechanism in accordance with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), which Chile had ratified in 2008, signalled a decisive step forward in promoting indigenous peoples' rights, but more remained to be done to ensure constitutional recognition for indigenous peoples and to create institutions that would represent their interests. Thanks to the adoption of the Anti-Discrimination Act in 2012, significant progress had been made in that regard, but the Government hoped to go further by making it compulsory for the State to adopt public policies against discrimination and to take steps to ensure that victims received compensation. A bill to amend the Act to that end was being examined. Although it was still in force, Amnesty Decree-Law No. 2191 — a relic of the dictatorship — was no longer applied. An amendment to the Criminal Code to prevent the application of amnesties, statutory limitations and partial statutory limitations in cases of genocide, crimes against humanity and war crimes was also being considered. The Anti-Terrorism Act was being studied with a view to possible amendments in the light of international standards, and the

Government, within the framework of the universal periodic review, had also undertaken not to apply the Act to indigenous peoples demonstrating in defence of their social interests. Social and cultural developments in Chilean society had opened up debate on sensitive subjects such as sexual and reproductive health rights and abortion, to which a number of the 180 recommendations that Chile had accepted during the universal periodic review related.

5. **The Chairperson** invited any Committee members who so wished to ask the delegation questions.

6. **Mr. Salvioli** expressed appreciation to the State party for the detailed information contained in its report and written replies. He noted that the State party's position on abortion had not changed since consideration of its previous report, giving rise to the concern that there was an irreconcilable difference of opinion on the issue between the State party and the Committee. He asked whether the lack of a reply from the State party to the question concerning the extent to which domestic courts invoked and applied the Covenant indicated that it was not invoked by domestic courts. If so, that might suggest that judges were not receiving adequate training, which should be rectified. The declaration made by the State party when it had ratified the first Optional Protocol to the Covenant was problematic in view of continuing violations, such as forced disappearances: by restricting the Committee's competence to acts occurring after the entry into force of the first Optional Protocol, it obliged the Committee to draw an artificial distinction between violations that were essentially similar. The State party should therefore withdraw its reservation without further delay, along with the declaration it had made on ratifying the Second Optional Protocol to the Covenant.

7. The establishment of a National Human Rights Institute in conformity with the Paris Principles was certainly a welcome development, but the Committee would need to know whether it had the necessary resources to carry out its mandate effectively and whether its work was sure to be made public, in accordance with the law, despite the restrictions that seemed to have been imposed in that regard under article 8 of the Constitution. The fact that Amnesty Decree-Law No. 2191 was not being applied was encouraging, but it would be preferable for the State party to repeal it, purely and simply, as had been recommended by various treaty bodies and by the Inter-American Commission on Human Rights. Lastly, clarification concerning the State party's position on the application of the Anti-Terrorism Act to indigenous peoples would be welcome: although the head of delegation had stated that the Government had undertaken not to apply the Act to indigenous peoples, it appeared from the report of the universal periodic review Working Group on Chile (A/HRC/26/5/Add.1) that the Government in office at the time had not accepted the recommendations made in that regard.

8. **Mr. Rodríguez-Rescia** asked whether the bill to set up an indigenous peoples' council, currently being examined by the Chamber of Deputies, was likely to be adopted soon. He wished to know how the council, once operational, could contribute to speeding up the constitutional reform that the State party had promised to carry out with a view to recognizing the right of indigenous peoples to self-determination. With regard to land restitution mechanisms introduced to safeguard indigenous peoples' right to their ancestral lands, it would be interesting to know what percentage of the land acquired by the National Indigenous Development Corporation was made up of ancestral lands and what objective criteria the Corporation had applied in prioritizing the claims of different communities. While the State party's decision to repeal Supreme Decree No. 124 was welcome, it should be noted that a number of projects affecting indigenous peoples had been approved and undertaken so far without prior consultation. It would be useful to know what steps the State party intended to take to ensure that prior consultation of indigenous peoples was effective in practice.

9. Despite the State party's laudable efforts to speed up investigations into human rights violations committed during the dictatorship, the number of torture cases in which a prosecution had been brought and a ruling handed down remained pitiful — fewer than 30 — compared with the number of complaints. In that respect, it would be interesting to know if the State party planned to lift the 50-year confidentiality rule that applied to witness statements collected by the National Commission on Political Prisoners and Torture (the Valech Commission) as part of its investigation into violations committed during the dictatorship, so that they could be used in prosecutions. Lastly, the delegation should clarify the meaning of the statement made in paragraph 66 of the written replies to the list of issues to the effect that torture was not subject to statutory limitation but was subject to the general rules for the time-barring of criminal action in cases where it could be considered a crime against humanity.

10. **Ms. Chanet** asked whether the 2012 Anti-Discrimination Act No. 20.609 covered discrimination on the grounds of race, ethnic origin and sex and whether it overlapped with the bill on gender identity currently before Congress. Further details on the provisions of that Act allowing derogation from the principle of non-discrimination would be welcome. Bearing in mind that the State party had not yet fully complied with the ruling handed down by the Inter-American Court of Human Rights in 2012 in the case of *Atala Riffo and daughters v. Chile*, which among other things ordered it to provide judicial officials with training on discrimination based on sexual orientation, and considering that transsexuals and homosexuals were systematically ill-treated by law enforcers and prison officers, she asked what steps the Chilean authorities had taken to raise awareness among the judiciary and law enforcement agencies regarding human rights and the prohibition of discrimination based on sexual orientation. Referring to paragraph 22 of the written replies, she asked whether the State party could reaffirm, before the Committee, the commitment it had recently undertaken within the framework of the universal periodic review to repeal article 373 of the Criminal Code. Lastly, she enquired about the follow-up given to complaints of ill-treatment involving State officials, which, according to the statistics supplied in paragraph 67 of the written replies, had increased considerably between 2006 and 2012.

11. **Mr. Neuman** asked what was preventing bill No. 7567-07, amending the community of property regime, from being adopted; whether it would be adopted soon; and whether the State party planned to take steps to help women make an informed choice when the new system for administering joint property came into force.

12. **Mr. Shany** asked the delegation what stage had been reached in considering the bills to legalize therapeutic abortion and termination of pregnancy for women and girls who became pregnant as a result of rape. He also asked whether the State party recognized the need to reform its abortion legislation, in the light of its international obligations. Given that, during the universal periodic review, the State party had stated that abortion could be carried out in exceptional cases, such as when the pregnancy endangered the mother's life, it would be useful to receive further details of the scope of those exceptions and to know whether, in such cases, if the principle of necessity were invoked, there existed any case law on the subject, and whether pregnant women and doctors were properly informed about the possibility of making exceptions to the law on abortion. The delegation was invited to comment on reports that, although the law provided for women to obtain free emergency contraceptives in public health facilities, many hospitals and clinics were refusing to distribute them. What was being done to remedy the situation? With regard to violence against women, it would be interesting to know whether the State party considered it appropriate to apply the criterion of "habitual ill-treatment" to psychological violence and whether the new 2013 bill currently before Congress resolved the problem and gave a clear and unequivocal definition of the criterion, which had so far been interpreted in different ways by the courts. Referring to paragraph 31 of the State party's written replies, he asked the delegation whether women who were victims of psychological violence had access to

the services of a lawyer on the same basis as those who suffered physical violence and how many cases of psychological violence had been brought to court. Finally, he wished to know whether the State party intended to follow up the recommendation made by the working group on violence against women in its 2009 report on Chile by creating a global programme to fight the problem in all its forms, and whether prosecutors had been given specific training to enable them to deal adequately with cases of violence against women.

13. With regard to women's employment, he asked why women's pay continued to be 25 per cent lower than men's and whether the State party planned to take steps to eradicate wage inequality and increase the percentage of women in permanent posts. On that subject, the delegation was invited to respond to information sent to the Committee indicating that only 16 per cent of women held permanent posts, which did not tally with the statistics given in the report, and likewise to explain the discrepancy between tables 9 and 10 in the written replies with regard to the number of women with employment contracts. Lastly, the delegation might also provide statistics on the number of complaints of violations of Act No. 20,348, which established the principle of equal pay for men and women, showing how many of the complaints had come before the courts.

14. **Mr. Zlătescu** asked when the 1978 Amnesty Decree-Law No. 2191 would be repealed and whether a road map had been drawn up for transferring military courts' competence to hear cases of human rights violations against civilian victims to the ordinary courts. It would be interesting to know whether provisions to that end had already been incorporated into the Code of Military Justice. Finally, it would be useful to know whether the human rights violations committed under the regime of Augusto Pinochet were discussed publicly in the State party, whether archives were freely accessible to the public, whether the dictatorship era was covered in the new history textbooks and whether journalists, researchers and human rights defenders received State grants to research the period.

15. **The Chairperson** proposed a brief suspension of the meeting to allow the Chilean delegation to prepare its replies to the questions that had been asked.

*The meeting was suspended at 4.30 p.m. and resumed at 4.55 p.m.*

16. **Mr. Riveros** (Chile) drew the Committee's attention to the fact that the written replies had been drafted before 11 March 2014, when there had been a change of government in Chile. The current Government's position on several of the issues raised by members of the Committee differed from that of the previous Government. The Chilean courts frequently invoked the provisions of international and regional human rights instruments to which Chile was party, including the Covenant, the American Convention on Human Rights and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). Article 8 of the Constitution enshrined the fundamental principle that acts and decisions of the State and its organs were public. Only in exceptional cases, by means of a law passed by a qualified majority, could certain material including information that could have a bearing on national security, be declared confidential. Individuals who were refused access to particular information and considered that refusal to be unjustified could approach the Transparency Council, a fully independent body, which could order the public authority concerned to release the desired information. If the authority continued to refuse, its chief was liable to penalties and an appeal could be lodged with the Court of Appeal.

17. **Mr. Quezada** (Chile) said that the issues of amnesty and statutory limitation were part of the broader framework of the fight against impunity for serious crimes committed in Chile during the dictatorship. Amnesty Decree-Law No. 2191, adopted under the military dictatorship, had indeed been applied systematically by military and civilian courts until 1998, allowing those who had committed human rights violations during the dictatorship to go unpunished. Chilean courts had also invoked statutory limitation for such crimes, with

the approval of the Supreme Court, until 2009. Moreover, for several years, the Supreme Court had applied the principle of "partial statutory limitation", which had been strongly criticized by human rights defenders in Chile because it allowed those who had committed human rights violations to receive lighter sentences and avoid imprisonment. However, Amnesty Decree-Law No. 2191 had not been applied for some 16 years, and the principle of partial statutory limitation for the last two. Nevertheless, the issue of how to tackle Decree-Law No. 2191 and its potential legal consequences posed many problems that had yet to be resolved. Taking into account the changes in parliamentary majority and government, conditions were ripe for drafting a new law to prevent statutory limitations from being applied to crimes against humanity and war crimes, whenever they had been committed. Moreover, the Chilean State had complied with the judgements handed down by the Inter-American Court of Human Rights in the cases of *Atala Riffo and daughters v. Chile* and *García Lucero et al. v. Chile*, including by providing the information requested.

18. **Ms. Castañeda** (Chile) said that the Chilean Government, conscious of its historical debt to indigenous peoples, wanted their individual and collective rights to be fully recognized in the new Constitution. The date on which consultations with indigenous peoples on the creation of a ministry for indigenous peoples and an indigenous peoples' council would be held in 2014 had been published in the Official Gazette. In March 2014, a Decree had been issued establishing full and complete participation by indigenous peoples in decisions that affected them. The majority of lands that had been returned to indigenous peoples could be considered ancestral lands. The Mapuche indigenous communities had submitted their claims for restitution directly to the National Indigenous Development Corporation, which had examined them under Act No. 19.253 and on the basis of the various land titles (*títulos de merced*) presented. In the north of Chile, the procedures for returning land to indigenous populations had differed because the land had belonged to the State. The Government planned to create a mechanism that would allow all ancestral lands to be returned and that would better meet the needs of indigenous peoples.

19. **Ms. Lagos** (Chile) said that changes to the community of property regime had met with public resistance. The bill to reform the regime was currently before parliament and the competent State authorities with a view to making sure that it satisfied the principles of equality between spouses, protection of the weaker spouse in a marriage and economic independence for women, among other things, but the delegation was not in a position to say when it might be adopted. Consideration of Bill No. 1707-18 to amend the Civil Code and associated acts and recognize equal rights and obligations for spouses had begun 13 years previously and had reached an advanced stage. On the issue of abortion, the current Chilean Government did not share the views expressed by the previous Government in the sixth periodic report and had undertaken to decriminalize the practice in cases where the life of the woman was in danger, where the pregnancy was the result of rape or the where foetus was not viable. Various State bodies were examining bills on abortion, the texts of which could be sent to the Committee if needed. The law on violence against women applied only to physical and psychological violence within the couple or the family. The Government had undertaken to amend the law in order to fill existing gaps, particularly by banning all forms of violence against women, including sexual harassment, in both the public and the private spheres. The "habitual ill-treament" condition applied both to psychological violence and to repeated physical violence that caused no injury. A bill defining "habitual ill-treatment" had been drafted. Women who were victims of violence received psychological, social and legal support at dedicated centres. The number of centres across the country had risen from 24 to 48. There were also plans to provide courses on violence against women to judges, prosecution staff and police officers.

20. The public authorities were aware of the problem of the low rate of employment among women and had set targets to increase the percentage of women who were employed in the formal labour market on an equal footing with men and received fair remuneration.

In order to achieve those targets, there were plans to expand the subsidy programme for women's employment so as to increase the number of beneficiaries from 350,000 to 550,000. The Government was instituting a number of programmes to enhance the presence of women in the civil service, including in high-level posts, and to improve their conditions of employment, in the hope that such measures would have a knock-on effect on the private sector. According to a report from the Chamber of Deputies, 20 complaints of breaches of the Equal Remuneration Act had been registered between 2011 and 2013, and the Directorate-General of Labour had issued 437 fines for such offences from 2012 to 2013.

21. **Ms. Badilla** (Chile) said that the Government was aware of the important role played by the National Human Rights Institute in promoting human rights, and hoped that it could be extended to cover all regions. Likewise, with a view to increasing awareness of human rights in State institutions, a bill to amend the Organic Act on the Ministry of Justice had been drafted. The bill provided for the establishment of a ministry of justice and human rights, with a human rights department attached, which among other things would be responsible for coordinating and formulating public policies to promote human rights, including a national human rights plan based on measurable indicators. The bill also provided for the creation of an interministerial human rights committee.

22. **Mr. Álvarez** (Chile) said that Chile had no figures available on how police brutality against civilians had been dealt with. In at least 11 *amparo* cases connected with the claims of indigenous peoples, the Temuco Court of Appeal had recalled, in its rulings, that police officers were bound to respect the fundamental rights of the accused, particularly children and adolescents. Police brutality had also occurred during public demonstrations, in one case causing the death of a child, over which the State had sued for damages, and the military courts had been criticized for their bias in dealing with such cases.

23. **Mr. Soto Muñoz** (Chile) said that, in 2011, the head of the Carabineros (police) had ordered the instructions on the use of force to be reviewed, which had led to the drafting of two directives intended to protect human rights and prevent acts of torture in the course of public order maintenance and detention proceedings. Training modules for police officers had also been prepared for the same purpose.

24. **Ms. Ortiz** (Chile) said that a bill to eliminate all forms of corporal and psychological punishment of children in all circumstances was being examined. With regard to lesbian, gay, bisexual and transgender individuals, including children, Chile had launched social, cultural and legislative measures with the aim of changing traditional attitudes and recognizing their rights. Moreover, action had been taken to eliminate all forms of violence against children, whatever their origin, nationality or gender.

25. **The Chairperson** thanked the delegation for its replies.

*The meeting rose at 6 p.m.*